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CEDARS-SINAI MEDICAL CENTER

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

ANTHONY RANDALL,

Plaintiff,

vs.

UNITED NETWORK FOR ORGAN
SHARING; CEDARS SINAI HEALTH
VENTURES,

Defendants.

Case No. 2:23-CV-02576-MEMF

Hon. Maame Ewusi-Mensah Frimpong

**DEFENDANT, CEDARS-SINAI
MEDICAL CENTER'S ANSWER
TO SECOND AMENDED
COMPLAINT**

FSC Date:

None Set

Trial Date:

None Set

Defendant Cedars-Sinai Medical Center ("Cedars-Sinai" or "Defendant")
answers the Second Amended Class Action Complaint ("Second Amended
Complaint") as follows:

INTRODUCTION

1. Cedars-Sinai lacks sufficient information and knowledge to admit or
deny the allegations in paragraph 1 and on that basis denies each and every
averment contained therein.

2. Cedars-Sinai lacks sufficient information and knowledge to admit or
deny the allegations in paragraph 2 and on that basis denies each and every

1 averment contained therein.

2 3. In response to paragraph 3, Cedars-Sinai admits an estimated
3 glomerular filtration rate test, commonly referred to as an eGFR, is one method
4 kidney function is measured. Cedars-Sinai admits that a patient's eGFR score can
5 be used for some patients to determine when the patient is eligible to begin accruing
6 wait time on the national kidney waitlist. Except as expressly admitted and averred
7 herein, Cedars-Sinai denies each and every averment in paragraph 3.

8 4. For its answer to paragraph 4, Cedars-Sinai admits and avers the
9 studies regarding creatinine in Black Americans Plaintiff references and
10 characterizes in paragraph 4 are the best evidence of their contents. Except as
11 expressly admitted and averred herein, Cedars-Sinai denies each and every averment
12 in paragraph 4.

13 5. For its answer to paragraph 5, Cedars-Sinai admits and avers the
14 studies regarding creatinine in Black Americans and the creation of the race-based
15 coefficient to eGFR scores Plaintiff references and characterizes in paragraph 5 are
16 the best evidence of their contents. Except as expressly admitted and averred
17 herein, Cedars-Sinai denies each and every averment in paragraph 5.

18 6. For its answer to paragraph 6, Cedars-Sinai admits and avers the
19 studies regarding creatinine in Black Americans, the creation of the race-based
20 coefficient to eGFR scores, and the article Plaintiff references, characterizes, and
21 purports to quote in paragraph 6 are the best evidence of their contents. Except as
22 expressly admitted and averred herein, Cedars-Sinai denies each and every averment
23 in paragraph 6.

24 7. For its answer to paragraph 7, Cedars-Sinai admits and avers the UNOS
25 website Plaintiff references, characterizes, and includes a purported image of in
26 paragraph 7, are the best evidence of its contents. Except as expressly admitted and
27 averred herein, Cedars-Sinai denies each and every averment in paragraph 7.

28 8. For its answer to paragraph 8, Cedars-Sinai admits and avers that a

1 patient's eGFR score can be used to in some patients to determine when the patient
2 is eligible to begin accruing wait time on the national kidney waitlist and that eGFR
3 scores and wait time can be factors in some instances for determining which patient
4 will be awarded an available kidney. Cedars-Sinai admits an eGFR score must fall
5 below 20 ml/min before it can be used to qualify a patient to accrue wait time.
6 Except as expressly admitted and averred herein, Cedars Sinai denies each and
7 every averment in paragraph 8.

8 9. For its answer to paragraph 9, Cedars-Sinai admits and avers that until
9 recently, a race-based coefficient was applied to some Black patients' eGFR scores
10 increasing them such that their unmodified eGFR scores were below 20 ml/min
11 before they could begin accruing wait time. Except as expressly admitted and
12 averred herein, Cedars-Sinai denies each and every averment in paragraph 9.

13 10. For its answer to paragraph 10, Cedars-Sinai admits and avers
14 beginning dialysis, which can be recommended when certain symptoms of kidney
15 disease present themselves or kidney function falls below 15 ml/min, is another way
16 for a patient to qualify to begin accruing wait time. Except as expressly admitted
17 and averred herein, Cedars-Sinai lacks sufficient information and knowledge to
18 admit or deny the allegations in paragraph 10 and on that basis denies each and
19 every averment contained therein.

20 11. For its answer to paragraph 11, Cedars-Sinai admits and avers the
21 UNOS announcements Plaintiff references and characterizes in paragraph 11 are the
22 best evidence of their contents. Except as expressly admitted and averred herein,
23 Cedars-Sinai denies each and every averment in paragraph 11.

24 12. For its answer to paragraph 12, Cedars-Sinai admits and avers the
25 UNOS announcement Plaintiff references and characterizes in paragraph 12 is the
26 best evidence of its contents. Except as expressly admitted and averred herein,
27 Cedars-Sinai lacks sufficient information and knowledge to admit or deny the
28 allegations in paragraph 12 and on that basis denies each and every averment

1 contained therein.

2 13. Cedars-Sinai admits the allegations in paragraph 13.

3 14. For its answer to paragraph 14, Cedars-Sinai admits and avers the
4 notification it sent to Plaintiff and its other Black kidney disease patients in March
5 2023 that Plaintiff references, characterizes, and purports to quote is the best
6 evidence of its contents. Except as expressly admitted and averred herein, Cedars-
7 Sinai denies each and every averment in paragraph 14.

8 15. Cedars-Sinai lacks sufficient information and knowledge to admit or
9 deny the allegations in paragraph 15 and on that basis denies each and every
10 averment contained therein.

11 16. Cedars-Sinai lacks sufficient information and knowledge to admit or
12 deny the allegations in paragraph 16 and on that basis denies each and every
13 averment contained therein.

14 17. For its answer to paragraph 17, Cedars-Sinai admits and avers Plaintiff
15 is identified as a Black American, was on UNOS's national kidney transplant
16 waitlist, suffered from kidney disease, took eGFR tests, at least some of which
17 appear to have had the race-based coefficient applied, and his reported eGFR test
18 results were eventually low enough to qualify him to be added to the waitlist to
19 begin accruing time. Except as expressly admitted and averred herein, Cedars-Sinai
20 denies each and every averment in paragraph 17.

21 18. For its answer to paragraph 18, Cedars-Sinai admits and avers Plaintiff
22 was on the national kidney transplant waitlist for more than five years and would
23 have had a qualifying eGFR score prior to that absent application of the race-based
24 coefficient. Except as expressly admitted and averred herein, Cedars-Sinai denies
25 each and every averment in paragraph 18.

26 19. For its answer to paragraph 19, Cedars-Sinai admits and avers new
27 donor kidneys become available and incorrect wait times of Black patients could be
28 one factor that could affect their fair consideration for kidneys as they become

1 available. Except as expressly admitted and averred herein, Cedars-Sinai denies
2 each and every averment in paragraph 19.

3 **PARTIES**

4 20. Cedars-Sinai lacks sufficient information and knowledge to admit or
5 deny the allegations in paragraph 20 and on that basis denies each and every
6 averment contained therein.

7 21. Cedars-Sinai lacks sufficient information and knowledge to admit or
8 deny the allegations in paragraph 21 and on that basis denies each and every
9 averment contained therein.

10 22. Cedars-Sinai admits the allegations in paragraph 22.

11 **JURISDICTION AND VENUE**

12 23. Paragraph 23 purports to state a legal conclusion to which no response
13 is required. To the extent a response may be required, Cedars-Sinai admits and
14 avers that this Court has subject matter jurisdiction over Plaintiff's federal law claim
15 under 28 U.S.C. § 1331 and over Plaintiff's state law claims under 28 U.S.C. §§
16 1332(d), 1343, and 1367 based on claims as presently pled in the Second Amended
17 Complaint. Except as expressly admitted and averred herein, Cedars-Sinai denies
18 each and every averment in paragraph 23.

19 24. Paragraph 24 purports to state a legal conclusion to which no response
20 is required. To the extent a response may be required, Cedars-Sinai admits and
21 avers venue is proper in this district pursuant to 28 U.S.C. § 1391. Except as
22 expressly admitted and averred herein, Cedars-Sinai denies each and every averment
23 in paragraph 24.

24 25. Paragraph 25 purports to state a legal conclusion to which no response
25 is required. To the extent a response may be required, Cedars-Sinai lacks sufficient
26 information and knowledge to admit or deny the allegations in paragraph 25 and on
27 that basis denies each and every averment contained therein.

28 26. Cedars-Sinai admits this Court has personal jurisdiction based on the

1 location of its principal place of business. Except as expressly admitted and averred
 2 herein, Cedars-Sinai denies each and every averment in paragraph 26.

3 **RESPONSE TO GENERAL ALLEGATIONS**

4 **A. For its answer to paragraph A, Cedars-Sinai admits and avers the**
 5 **national kidney transplant list is maintained by defendant UNOS and**
 6 **wait time is one factor considered in awarding donor kidneys. Except as**
 7 **expressly admitted and averred herein, Cedars-Sinai denies each and**
 8 **every averment in paragraph A.**

9 27. For its answer to paragraph 27, Cedars-Sinai admits and avers the
 10 federal statute Plaintiff references and characterizes in paragraph 27 is the best
 11 evidence of its contents. Cedars-Sinai admits and avers kidney patients may also
 12 seek a kidney from a private donor while being on the national wait list. Except as
 13 expressly admitted and averred herein, Cedars-Sinai denies each and every averment
 14 in paragraph 27.

15 28. For its answer to paragraph 28, Cedars-Sinai admits and avers UNOS
 16 manages the national registry for kidney donor matching and UNOS's website that
 17 Plaintiff references, characterizes, and purports to quote is the best evidence of its
 18 contents. Cedars-Sinai admits and avers UNOS establishes and implements policy
 19 concerning how donor kidneys will be awarded to patients with kidney disease.
 20 Except as expressly admitted and averred herein, Cedars-Sinai denies each and
 21 every averment in paragraph 28.

22 29. For its answer to paragraph 29, Cedars-Sinai admits and avers there is a
 23 process by which a patient can be added to the national kidney transplant waitlist
 24 which includes receiving a referral from their physician and being a patient at a
 25 transplant hospital like Cedars-Sinai. Except as expressly admitted and averred
 26 herein, Cedars-Sinai denies each and every averment in paragraph 29.

27 30. For its answer to paragraph 30, Cedars-Sinai admits and avers the
 28 national kidney transplant waitlist is maintained using UNOS software known as

1 UNet and after a new patient is added to the waitlist, the referring hospital is able to
 2 enter medical information about that patient including eGFR scores, which the UNet
 3 software tracks. Except as expressly admitted and averred herein, Cedars-Sinai
 4 denies each and every averment in paragraph 30.

5 31. Cedars-Sinai admits the allegations in paragraph 31.

6 32. For its answer to paragraph 32, Cedars-Sinai admits and avers accrued
 7 wait time is one factor considered by UNet's algorithm to rank candidates for
 8 potentially compatible kidneys. Except as expressly admitted and averred herein,
 9 Cedars-Sinai denies each and every averment in paragraph 32.

10 33. For its answer to paragraph 33, Cedars-Sinai admits and avers referral
 11 to the waitlist does not automatically start the clock on qualifying wait time.
 12 Cedars-Sinai admits and avers a patient can accrue qualifying wait time by being
 13 added to the national wait list with a qualifying eGFR score or by beginning
 14 dialysis. Except as expressly admitted and averred herein, Cedars-Sinai denies each
 15 and every averment in paragraph 33.

16 **B. For its answer to paragraph B, Cedars-Sinai admits and avers a race-**
 17 **based coefficient was used for some eGFR scores for Black patients.**
 18 **Except as expressly admitted and averred herein, Cedars-Sinai denies**
 19 **each and every averment in paragraph B.**

20 34. For its answer to paragraph 34, Cedars-Sinai lacks sufficient
 21 information and knowledge to admit or deny the allegations in paragraph 34 and on
 22 that basis denies each and every averment contained therein.

23 35. For its answer to paragraph 35, Cedars-Sinai admits and avers the
 24 application of the race-based coefficient to eGFR scores for Black Americans was
 25 accepted medical practice for years based on then-accepted medical studies. Except
 26 as expressly admitted and averred herein, Cedars-Sinai denies each and every
 27 averment in paragraph 35.

28 36. For its answer to paragraph 36, Cedars-Sinai admits and avers one way

1 for a patient to begin accruing wait time is to be added to the national wait list with a
2 qualifying eGFR score, and for Black patients who had the race-based coefficient
3 applied, the race-based coefficient raised their eGFR score which could prevent
4 them for qualifying to be added to the waitlist and accrue qualifying wait time.
5 Except as expressly admitted and averred herein, Cedars-Sinai denies each and
6 every other averment in paragraph 36.

7 37. For its answer to paragraph 37, Cedars-Sinai admits and avers UNOS
8 allowed use of the race-based coefficient for eGFR scores which could affect a
9 patient's wait time and that the UNet software includes an algorithm that considers
10 wait time as one factor in ranking patients for donor kidneys. Except as expressly
11 admitted and averred herein, Cedars-Sinai denies each and every averment in
12 paragraph 37.

13 38. Cedars-Sinai denies the allegations in paragraph 38.

14 39. For its answer to paragraph 39, Cedars-Sinai admits and avers the
15 article by Dr. Toni Martin published in November 2011 in the American Journal of
16 Kidney Disease that Plaintiff references, characterizes, and purports to quote is the
17 best evidence of its contents. Except as expressly admitted and averred herein,
18 Cedars Sinai denies each and every averment in paragraph 39.

19 40. For its answer to paragraph 40, Cedars-Sinai admits and avers a Black
20 patient on the national wait list whose eGFR scores were increased by use of the
21 race-based coefficient could have accrued less wait time than if the race-based
22 coefficient were not applied and that wait time is one factor considered when
23 awarding donor kidneys. Except as expressly admitted and averred herein, Cedars-
24 Sinai lacks sufficient information and knowledge to admit or deny the allegations in
25 paragraph 40 and on that basis denies each and every averment contained therein.

26 41. Cedars-Sinai lacks sufficient information and knowledge to admit or
27 deny the allegations in paragraph 41 and on that basis denies each and every
28 averment contained therein.

1 42. Cedars-Sinai lacks sufficient information and knowledge to admit or
2 deny the allegations in paragraph 42 and on that basis denies each and every
3 averment contained therein.

4 43. Cedars-Sinai lacks sufficient information and knowledge to admit or
5 deny the allegations in paragraph 43 and on that basis denies each and every
6 averment contained therein.

7 **C. Cedars-Sinai denies the allegations in paragraph C.**

8 44. For its answer to paragraph 44, Cedars-Sinai admits and aver the
9 UNOS press release Plaintiff references, characterizes, and purports to quote in
10 paragraph 44 and footnote 2 is the best evidence of its contents. Except as expressly
11 admitted and averred herein, Cedars-Sinai denies each and every averment in
12 paragraph 44.

13 45. For its answer to paragraph 45, Cedars-Sinai admits and avers UNOS
14 implemented policy disallowing use of the race-based coefficient for Black patients'
15 eGFR scores as of July 27, 2022. Except as expressly admitted and averred herein,
16 Cedars-Sinai denies each and every averment in paragraph 45.

17 46. Cedars-Sinai lacks sufficient information and knowledge to admit or
18 deny the allegations in paragraph 46 and on that basis denies each and every
19 averment contained therein.

20 47. For its answer to paragraph 47, Cedars-Sinai admits and avers the
21 January 5, 2023 UNOS policy announcement Plaintiff references and purports to
22 characterize in paragraph 47 is the best evidence of its contents. Except as expressly
23 admitted and averred herein, Cedars-Sinai denies each and every averment in
24 paragraph 47.

25 48. Cedars-Sinai lacks sufficient information and knowledge to admit or
26 deny the allegations in paragraph 48 and on that basis denies each and every
27 averment contained therein.

28 49. For its answer to paragraph 49, Cedars-Sinai admits and avers the UNet

1 algorithm continued to use wait times as one factor when determining the ranking of
 2 kidney donor matches during the period of time wait times were being considered
 3 for adjustment. Except as expressly admitted and averred herein, Cedars-Sinai
 4 denies each and every averment in paragraph 49.

5 50. Cedars-Sinai lacks sufficient information and knowledge to admit or
 6 deny the allegations in paragraph 50 and on that basis denies each and every
 7 averment contained therein.

8 **D. For its answer to paragraph D, Cedars-Sinai admits and avers Plaintiff**
 9 **had eGFR scores for years that applied the race-based coefficient.**

10 **Except as expressly admitted and averred herein, Cedars-Sinai denies the**
 11 **allegations of paragraph D.**

12 51. Cedars-Sinai lacks sufficient information and knowledge to admit or
 13 deny the allegations in paragraph 51 and on that basis denies each and every
 14 averment contained therein.

15 52. For its answer to paragraph 52, Cedars-Sinai admits and avers Plaintiff
 16 had multiple eGFR scores that applied the race-based coefficient. Except as
 17 expressly admitted and averred herein, Cedars-Sinai lacks sufficient information and
 18 knowledge to admit or deny the allegations in paragraph 52 and on that basis denies
 19 each and every averment contained therein.

20 53. For its answer to paragraph 53, Cedars-Sinai admits and avers Plaintiff
 21 had multiple eGFR scores. Except as expressly admitted and averred herein,
 22 Cedars-Sinai denies each and every averment in paragraph 53.

23 54. Cedars-Sinai lacks sufficient information and knowledge to admit or
 24 deny the allegations in paragraph 54 and on that basis denies each and every
 25 averment contained therein.

26 55. Cedars-Sinai lacks sufficient information and knowledge to admit or
 27 deny the allegations in paragraph 55 and on that basis denies each and every
 28 averment contained therein.

1 56. Cedars-Sinai denies the allegations in paragraph 56.

2 57. For its answer to paragraph 57, Cedars-Sinai admits and avers Plaintiff
3 was an alternate candidate to receive a donor kidney in December of 2022. Except
4 as expressly admitted and averred herein, Cedars-Sinai lacks sufficient information
5 and knowledge to admit or deny the allegations in paragraph 57 and on that basis
6 denies each and every averment contained therein.

7 58. For its answer to paragraph 58, Cedars-Sinai admits and avers
8 Plaintiff's wait time was not recalculated by Cedars-Sinai prior to December of
9 2022 after UNOS announced in June 2022 that it would stop accepting eGFR scores
10 that applied the race-based coefficient. Except as expressly admitted and averred
11 herein, Cedars-Sinai denies each and every averment in paragraph 58.

12 59. Cedars-Sinai denies each and every averment in paragraph 59.

13 60. For its answer to paragraph 60, Cedars-Sinai denies each and every
14 averment in paragraph 60.

15 61. For its answer to paragraph 61, Cedars-Sinai denies each and every
16 averment in paragraph 61.

17 **E. Cedars-Sinai lacks sufficient information and knowledge to admit or**
18 **deny the allegations in paragraph E and on that basis denies each and**
19 **every averment contained therein.**

20 62. Cedars-Sinai lacks sufficient information and knowledge to admit or
21 deny the allegations in paragraph 62 and on that basis denies each and every
22 averment contained therein.

23 **RESPONSE TO CLASS ACTION ALLEGATIONS**

24 63. For its answer to paragraph 63, Cedars-Sinai admits and avers that
25 Plaintiff purports to bring this action on behalf of himself and his proposed putative
26 class definitions. Except as expressly admitted and averred herein, Cedars-Sinai
27 denies the allegations of paragraph 63.

28 64. For its answer to paragraph 64, Cedars-Sinai admits and avers Plaintiff

1 seeks damages for the proposed putative class stated therein. Except as expressly
2 admitted and averred herein, Cedars-Sinai denies the allegations of paragraph 64.

3 65. For its answer to paragraph 65, Cedars-Sinai admits and avers that
4 Plaintiff purports to bring this action on behalf of himself and his proposed putative
5 subclass definitions. Except as expressly admitted and averred herein, Cedars-Sinai
6 denies the allegations of paragraph 65.

7 66. For its answer to paragraph 66, Cedars-Sinai admits and avers Plaintiff
8 seeks damages for the proposed putative subclass stated therein. Except as
9 expressly admitted and averred herein, Cedars-Sinai denies the allegations of
10 paragraph 66.

11 67. For its answer to paragraph 67, Cedars-Sinai admits and avers Plaintiff
12 seeks damages for the proposed putative subclass stated therein. Except as
13 expressly admitted and averred herein, Cedars-Sinai denies the allegations of
14 paragraph 67.

15 68. Paragraph 68 purports to state a legal conclusion to which no response
16 is required. To the extent a response may be required, Cedars-Sinai denies each and
17 every averment in paragraph 68.

18 69. Paragraph 69 purports to state a legal conclusion to which no response
19 is required. To the extent a response may be required, Cedars-Sinai denies each and
20 every averment in paragraph 69.

21 70. Paragraph 70 purports to state a legal conclusion to which no response
22 is required. To the extent a response may be required, Cedars-Sinai denies each and
23 every averment in paragraph 70.

24 71. Paragraph 71 purports to state a legal conclusion to which no response
25 is required. To the extent a response may be required, Cedars-Sinai denies each and
26 every averment in paragraph 71.

27 72. Paragraph 72 purports to state a legal conclusion to which no response
28 is required. To the extent a response may be required, Cedars-Sinai denies each and

1 every averment in paragraph 72.

2 73. Paragraph 73 purports to state a legal conclusion to which no response
3 is required. To the extent a response may be required, Cedars Sinai denies each and
4 every averment in paragraph 73.

5 74. Paragraph 74 purports to state a legal conclusion to which no response
6 is required. To the extent a response may be required, Cedars-Sinai denies each and
7 every averment in paragraph 74.

8 75. Paragraph 75 purports to state a legal conclusion to which no response
9 is required. To the extent a response may be required, Cedars-Sinai denies each and
10 every averment in paragraph 75.

11 76. Paragraph 76 purports to state a legal conclusion to which no response
12 is required. To the extent a response may be required, Cedars-Sinai denies each and
13 every averment in paragraph 76.

14 77. Paragraph 77 purports to state a legal conclusion to which no response
15 is required. To the extent a response may be required, Cedars-Sinai denies each and
16 every averment in paragraph 77.

17 78. Paragraph 78 purports to state a legal conclusion to which no response
18 is required. To the extent a response may be required, Cedars-Sinai denies each and
19 every averment in paragraph 78.

20 79. Paragraph 79 purports to state a legal conclusion to which no response
21 is required. To the extent a response may be required, Cedars-Sinai denies each and
22 every averment in paragraph 79.

23 80. Cedars-Sinai lacks sufficient information and knowledge to admit or
24 deny the allegations in paragraph 80 and on that basis denies each and every
25 averment contained therein.

26 81. Paragraph 81 purports to state a legal conclusion to which no response
27 is required. To the extent a response may be required, Cedars-Sinai admits and
28 avers UNOS maintains the national kidney waitlist, and Cedars-Sinai is located in

1 California. Except as expressly admitted and averred herein, Cedars-Sinai lacks
2 sufficient information and knowledge to admit or deny the allegations in paragraph
3 81 and on that basis denies each and every averment contained therein.

4 82. Paragraph 82 purports to state a legal conclusion to which no response
5 is required. To the extent a response may be required, Cedars-Sinai denies each and
6 every averment in paragraph 82.

7 **RESPONSE TO FIRST CAUSE OF ACTION**

8 **(Violation of Title VI of the Civil Rights Act of 1964)**

9 83. For its answer to paragraph 83, Cedars-Sinai refers to and incorporates
10 by reference each of its responses to the preceding paragraphs in the Second
11 Amended Complaint.

12 84. For its answer to paragraph 84-89, Cedars-Sinai admits and avers
13 Plaintiff purports to bring this claim against UNOS only and thus Cedars-Sinai does
14 not need to respond to the allegations in paragraph 84-89. To the extent a response is
15 required, Cedars-Sinai denies the allegations.

16 **RESPONSE TO SECOND CAUSE OF ACTION**

17 **(Violation of the Unruh Civil Rights Act [California Civil Code § 51])**

18 85. For its answer to paragraph 90, Cedars-Sinai refers to and incorporates
19 by reference each of its responses to the preceding paragraphs in the Second
20 Amended Complaint.

21 86. For its answer to paragraph 91, Cedars-Sinai admits and avers Plaintiff
22 purports to bring this claim against UNOS and Cedars Sinai on behalf of his
23 proposed classes. Except as expressly admitted and averred herein, Cedars-Sinai
24 denies the allegations in paragraph 91.

25 87. Paragraph 92 purports to state a legal conclusion to which no response
26 is required. To the extent a response is required, Cedars-Sinai denies the allegations
27 in paragraph 92.

28 88. Paragraph 93 purports to state a legal conclusion to which no response

1 is required. To the extent a response is required, Cedars-Sinai admits and avers
 2 UNOS allowed use of eGFR scores that applied the race-based coefficient to some
 3 patients identified as Black within California which could have delayed their accrual
 4 of wait time, which is one factor used to determine ranking for donor kidneys that
 5 become available. Except as expressly admitted and denied herein, Cedars-Sinai
 6 denies the allegations in paragraph 93.

7 89. For its answer to paragraph 94, Cedars-Sinai admits and avers UNOS
 8 used the wait times in its UNet software some of which included wait times based
 9 on eGFR scores that applied a race-based coefficient to some patients identified as
 10 Black and that wait time is one factor used to determiner ranking for donor kidneys
 11 that become available. Except as expressly admitted and averred herein, Cedars-
 12 Sinai lacks sufficient information and knowledge to admit or deny the allegations in
 13 paragraph 94 and on that basis denies each and every averment contained there.

14 90. For its answer to paragraph 95, Cedars-Sinai admits and avers it
 15 submitted to UNOS eGFR scores that applied the race-based coefficient for some
 16 patients identified as Black. Except as expressly admitted and averred herein,
 17 Cedars-Sinai denies each and every averment in paragraph 95.

18 91. Paragraph 96 purports to state a legal conclusion to which no response
 19 is required. To the extent a response is required, Cedars-Sinai admits and aver it is
 20 located in California. Except as expressly admitted herein, Cedars-Sinai denies each
 21 and every averment in paragraph 96.

22 92. Paragraph 97 purports to state a legal conclusion to which no response
 23 is required. To the extent a response is required, Cedars-Sinai denies each and every
 24 averment in paragraph 97.

25 **RESPONSE TO THIRD CAUSE OF ACTION**

26 **(Breach of Fiduciary Duty)**

27 93. For its answer to paragraph 98, Cedars-Sinai refers to and incorporates
 28 by reference each of its responses to the preceding paragraphs in the Second

1 Amended Complaint.

2 94. For its answer to paragraph 99, Cedars-Sinai admits and avers Plaintiff
3 purports to bring this claim against UNOS and Cedars Sinai on behalf of his
4 proposed classes. Except as expressly admitted and averred herein, Cedars-Sinai
5 denies the allegations in paragraph 99.

6 95. Paragraph 100 purports to state a legal conclusion to which no response
7 is required. To the extent a response is required, Cedars-Sinai admits and avers it
8 was the transplant hospital for Plaintiff. Except as expressly admitted and averred
9 herein, Cedar-Sinai denies each and every averment in paragraph 100.

10 96. Paragraph 101 purports to state a legal conclusion to which no response
11 is required. To the extent a response is required, Cedars-Sinai denies each and every
12 averment in paragraph 101.

13 97. For its answer to paragraph 102, Cedars-Sinai admits and avers it
14 submitted to UNOS eGFR scores that applied the race-based coefficient for some
15 patients identified as Black. Except as expressly admitted and averred herein,
16 Cedars-Sinai denies each and every averment in paragraph 102.

17 98. Paragraph 103 purports to state a legal conclusion to which no response
18 is required. To the extent a response is required, Cedars-Sinai denies each and every
19 averment in paragraph 103.

20 **RESPONSE TO FOURTH CAUSE OF ACTION**
21 **(Violation of California's Unfair Competition Law [Cal. Bus. & Prof. Code §**
22 **17200 et seq.])**

23 99. For its answer to paragraph 104, Cedars-Sinai refers to and incorporates
24 by reference each of its responses to the preceding paragraphs in the Second
25 Amended Complaint.

26 100. For its answer to paragraph 105, Cedars-Sinai admits and avers
27 Plaintiff purports to bring this claim against UNOS and Cedars Sinai on behalf of
28 his proposed classes. Except as expressly admitted and averred herein, Cedars-Sinai

1 denies the allegations in paragraph 105.

2 101. Paragraph 106 purports to state a legal conclusion to which no response
3 is required. To the extent a response is required, Cedars-Sinai admits and avers
4 UNOS allowed use of and Cedars-Sinai submitted to UNOS eGFR scores that
5 applied the race-based coefficient to some patients identified as Black which could
6 have delayed their accrual of wait time, which is one factor used to determine
7 ranking for donor kidneys that become available. Except as expressly admitted and
8 denied herein, Cedars-Sinai denies the allegations in paragraph 106.

9 102. Paragraph 107 purports to state a legal conclusion to which no response
10 is required. To the extent a response is required, Cedars-Sinai lacks sufficient
11 information and knowledge to admit or deny the allegations in paragraph 107 and on
12 that basis denies each and every averment contained therein.

13 103. Paragraph 108 purports to state a legal conclusion to which no response
14 is required. To the extent a response is required, Cedars-Sinai admits and aver it is
15 located in California. Except as expressly admitted herein, Cedars-Sinai denies each
16 and every averment in paragraph 108.

17 104. For its answer to paragraph 109, Cedars-Sinai lacks sufficient
18 information and knowledge to admit or deny the allegations in paragraph 109 and on
19 that basis denies each and every averment contained therein.

20 105. Paragraph 110 purports to state a legal conclusion to which no response
21 is required. To the extent a response is required, Cedars-Sinai admits denies each
22 and every averment in paragraph 110.

23 **RESPONSE TO PRAYER FOR RELIEF**

24 Cedars-Sinai denies that Plaintiff or putative class members are entitled to the
25 relief requested against Cedar-Sinai in paragraphs 1 through 7 on pages 21 and 22 of
26 the Second Amended Complaint.

27 **JURY DEMAND**

28 Cedars-Sinai demands a trial by jury for all claims so triable.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim)

Plaintiff's Second Amended Complaint, and each and every cause of action therein, fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

(Compliance with Applicable Law)

Cedars-Sinai's practices were not unlawful in that Cedars-Sinai complied with all applicable statutes and regulations including but not limited to fiduciary duties and having a reasonable basis based on then-accepted medical practice at the time for its practices in relation to the Unruh Act, Unfair Competition Law, and fiduciary duty.

THIRD AFFIRMATIVE DEFENSE

(Absence of Injury)

Plaintiff and putative class members have not sustained any legal injury or damage as a result of any actions allegedly taken by Cedars-Sinai, and are thus barred from asserting claims against Cedars-Sinai.

FOURTH AFFIRMATIVE DEFENSE

(Plaintiff's Own Actions or Inaction)

Plaintiff's damages and the damages of the putative class members, if any, have been caused by their own actions or inaction, including, but not limited to, not seeking to be referred to the national wait list sooner or questioning use of the race-based coefficient on their eGFR lab results.

FIFTH AFFIRMATIVE DEFENSE

(Laches and Unclean Hands)

Plaintiff's and the putative class members' claims are barred, in whole or in part, by the doctrine of laches and unclean hands.

1 **SIXTH AFFIRMATIVE DEFENSE**

2 **(Lack of Causation)**

3 To the extent Plaintiff or the putative class members have alleged any injury,
4 the sole and proximate cause of the alleged injury results from the actions, inactions,
5 or negligence, in whole or in part, of persons other than Cedars-Sinai for whose
6 actions, inactions, or negligence, in whole or in part, Cedars-Sinai is in no way
7 liable. Plaintiff and the putative class are not, therefore, entitled to recover from
8 Cedars-Sinai in this action.

9 **SEVENTH AFFIRMATIVE DEFENSE**

10 **(Intervening Cause)**

11 Plaintiff and the putative class members may be barred from recover, in
12 whole or in part, due to the intervening cause of another party or medical condition.

13 **EIGHTH AFFIRMATIVE DEFENSE**

14 **(Waiver and Exhaustion)**

15 The claims in the Second Amended Complaint are barred, in whole or in part,
16 by the doctrines of waiver and exhaustion.

17 **NINTH AFFIRMATIVE DEFENSE**

18 **(Estoppel)**

19 The claims in the Second Amended Complaint are barred, in whole or in part,
20 by the doctrine of estoppel.

21 **TENTH AFFIRMATIVE DEFENSE**

22 **(Ratification)**

23 The claims in the Second Amended Complaint are barred, in whole or in part,
24 by the doctrine of ratification.

25 **ELEVENTH AFFIRMATIVE DEFENSE**

26 **(Statute of Limitations)**

27 Plaintiff's and the putative class members' claims are barred by the statute of
28 limitations. The Unruh Civil Rights Act does not include a provision expressly

1 specifying the statute of limitations. Courts typically apply either a two-year statute
 2 of limitations based on claims of personal injury, or a three-year statute of
 3 limitations for claims based on statutory provisions. *Brown v. Napa Valley Sch.*
 4 *Dist.*, No. C-11-5673 JCS, 2012 U.S. Dist. LEXIS 69943, *27 (N.D. Cal. May 18,
 5 2012) (stating Unruh Act has no statute of limitations and citing Ninth Circuit cases
 6 that applied both two and three years); *Hernandez v. Sutter West Capital*, No. C 09-
 7 03658 CRD, 2010 U.S. Dist. LEXIS 88109, *7-8 (N.D. Cal. Aug. 26, 2010) (noting
 8 the statute of limitations for an Unruh Act claim is an open question and applying a
 9 two-year limit); *Gilley v. JPMorgan Chase Bank, N.A.*, No. 12cv1774 AJB (JMA),
 10 2012 U.S. Dist. LEXIS 189888, *15 (S.D. Cal. Oct. 12, 2012) (applying two year
 11 limit based on parties' agreement); *Frances v. Accessible Space, Inc.*, NO. 2:16-cv-
 12 1016-JAM-GGH, 2018 U.S. Dist. LEXIS 72546, *19 (E.D. Cal. Apr. 28, 2018)
 13 (citing cases and finding most district courts apply three-year limitations period).

14 “The code of civil procedure does not specify a statute of limitations for
 15 breach of fiduciary duty.” *Thomson v. Canyon*, 198 Cal. App. 4th 594, 606 (2011).
 16 Unless the gravamen of the claim is for a different kind of claim, section 343 of the
 17 Code of Civil Procedure provides a “residual four-year statute of limitations.” *Id.*
 18 The gravamen of the claim here appears to be the same as the alleged discrimination
 19 underlying the Unruh Act claim.

20 The statute of limitations for a UCL claim is four years. *Aryeh v. Canon*
 21 *Business Solutions, Inc.*, 55 Cal. 4th 1185, 1192 (2013) (citing Cal. Bus. & Prof.
 22 Code § 17208). The four-year limitations period applies even if the UCL claim is
 23 based on a violation of some other law. *Beaver v. Tarsadia Hotels*, 816 F.3d 1170,
 24 1177 (9th Cir. 2016) (citation omitted).

25 **TWELFTH AFFIRMATIVE DEFENSE**

26 **(Class Treatment Inappropriate)**

27 If the Court grants class certification and/or otherwise aggregates claims of
 28 multiple persons, it will violate the Due Process Clause of the Fifth Amendment of

1 the United States Constitution, and the Due Process provision of the Fourteenth
 2 Amendment to the United States Constitution if the Court adopts rules or procedures
 3 and/or standards of proof that allow for relaxed rules regarding what each plaintiff
 4 and/or putative class member must prove to establish liability, damages, or
 5 entitlement to any other relief. Similarly, it will violate Cedars-Sinai's
 6 constitutional rights if the Court adopts presumptions and/or inferences that, in
 7 effect, increase the burden of proof on affirmative defenses under the claims or
 8 prevent them from being met as to individual putative class members.

9 **THIRTEENTH AFFIRMATIVE DEFENSE**

10 **(Excessive Penalties)**

11 If the Court grants class certification and aggregates the claims of Plaintiff
 12 and the putative class, the result would be an unconstitutionally excessive
 13 imposition of damages in violation of the Due Process clause of the Fifth
 14 Amendment of the United States Constitution, and the Due Process provision of the
 15 Fourteenth Amendment of the United States Constitution. The aggregate damages
 16 requested by Plaintiff would not be proportionate to Cedars Sinai's alleged
 17 culpability, the relationship between the harm alleged and the penalty, actual
 18 damages (if any), and Cedars-Sinai's ability to pay and are thus excessive and
 19 unconstitutional.

20 **FOURTEENTH AFFIRMATIVE DEFENSE**

21 **(Defenses Specific to Putative Class Members)**

22 Cedars-Sinai may have additional unique affirmative defenses applicable to
 23 different putative class members. Cedars-Sinai reserves the right to assert such
 24 additional affirmative defenses as the need arises.

25 **FIFTEENTH AFFIRMATIVE DEFENSE**

26 **(Failure to Mitigate)**

27 Plaintiff's and the putative class member's claims are barred to the extent
 28 they have failed to mitigate damages.

1 **SIXTEENTH AFFIRMATIVE DEFENSE**

2 ***(Res Judicata)***

3 The claims in the Second Amended Complaint are barred, in whole or in part,
4 by the doctrine of *res judicata*.

5 **SEVENTEENTH AFFIRMATIVE DEFENSE**

6 ***(Release, Accord and Satisfaction)***

7 Plaintiff's and the putative class member's claims are barred to the extent
8 individual putative class members have released claims against Cedars-Sinai.

9 **EIGHTEENTH AFFIRMATIVE DEFENSE**

10 ***(Reservation)***

11 Cedars-Sinai reserves the right to amend its Answer and Affirmative
12 Defenses and/or to assert additional affirmative defenses as they become known to
13 Cedars-Sinai through the course of discovery and further investigation. Cedars-
14 Sinai has not knowingly or intentionally waived any applicable affirmative defenses.

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1 **WHEREFORE**, Cedars-Sinai prays that the Court determine and adjudge:
2 a) that this suit cannot be maintained as a class action;
3 b) that judgment be entered in Cedars-Sinai's favor against Plaintiff on each
4 and every cause of action in the Second Amended Complaint;
5 c) that Plaintiff take nothing by the Second Amended Complaint;
6 d) that Cedars-Sinai be awarded its costs, disbursements, attorneys' fees, and
7 expenses incurred herein; and
8 e) any other and further relief as the Court deems appropriate.
9

10 DATED: April 26, 2024

LEWIS BRISBOIS BISGAARD & SMITH LLP

11
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13 By:



DANIELLE E. STIERNA

Attorneys for Defendant, CEDARS-SINAI
MEDICAL CENTER
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